

**SECTION 1602 EXCHANGE FUND AGREEMENT BY AND BETWEEN
ARKANSAS DEVELOPMENT FINANCE AUTHORITY AND
LIMITED PARTNERSHIP**

This Agreement (the "Agreement") is entered into this _____ day of _____, 2009, and made by and between the Arkansas Development Finance Authority (hereafter designated as "ADFA") and the _____ Limited Partnership (hereafter designated as "Owner").

WHEREAS, Owner received an award of federal low-income housing tax credits ("tax credits") on or about _____, 200__ for the [acquisition and rehabilitation], [rehabilitation], [construction] of a qualified low-income housing project known as "_____" located in _____ County, AR ("the Development"). The Development will consist of a total of _____ (____) housing units, of which _____ (____) will be income-restricted and rent-restricted pursuant to Section 42 of the Internal Revenue Code (the "IRC").

WHEREAS, [Owner is retaining \$_____ of 200__ federal low income housing tax credits.] [Owner has returned \$1,000 of its 200__ tax credits allocated to ADFA in exchange for an allocation of equal amount of 2009 low income housing tax credits. Owner acknowledges that ADFA will not exchange Owner's returned credits with the United States Treasury under the "Section 1602 Program." Owner's returned credits will remain low-income housing tax credits available for allocation, as credits, to 2009 tax credit applicants or applicants seeking additional tax credits.] Owner returned \$_____ of 200__ tax credits to ADFA on _____, 2009 due to an inability to obtain an equity investor for the tax credits.

WHEREAS, Owner applied on _____, 2009, for a Section 1602 Exchange Fund Grant as defined herein as a financing source for the Development. ADFA Board of Directors awarded Owner _____ **Dollars (\$_____)** as a Section 1602 Exchange Fund Grant to [acquire and rehabilitate][construct] [rehabilitate] _____ (____) multi-family units for rent, subject to all restrictions set forth by 26 U.S.C. Section 42 and accompanying legislation, including but not limited to all applicable regulations, revenue rulings, revenue procedures, other guidance issued by the United States Treasury and the Internal Revenue Service, and all further restrictions agreed to by Owner.

NOW THEREFORE, ADFA and Owner hereby execute this Agreement to undertake the described affordable housing Development.

FURTHERMORE, ADFA and Owner agree as follows:

I. THE DEVELOPMENT

- A. Owner is the owner of certain real property, more particularly described in Attachment 'A' located in the City of _____, _____ County, AR and shall complete the [construction] [rehabilitation] of _____ (____) housing units on the real property of the Development. _____ (____) of the _____ (____) units will be tax credit-qualified units and will accordingly be reserved for low-income tenants that are income eligible and otherwise eligible under Section 42 of the IRC.
- B. Owner shall construct the Development to the standards required in Section II of this Agreement an in conformance with all representations made by Owner and Owner's architect. The Development shall constitute a qualified low-income housing Development as defined in Section 42(g) of the I.R.C. and regulations promulgated thereunder. The housing units of the

Development will be rented or available for rental on a continuous basis to members of the general public throughout the term of this Agreement.

C. Owner certifies that the Development was not placed in service prior to 2009.

D. Owner elects the following minimum set-aside election:

_____ 40% of the total housing units (exclusive of the designated number of manager/employee units) will be reserved for households that have an annual gross income equal to or less than 60% of the area median income for the area, as determined by HUD, adjusted for family size and otherwise eligible under Section 42 of the I.R.C.

OR

_____ 20% of the total housing units (exclusive of the designated number of manager/employee units) will be reserved for households that have an annual gross income equal to or less than 50% of the area median income for the area, as determined by HUD, adjusted for family size and otherwise eligible under Section 42 of the I.R.C.

Including the requisite number of units to meet the minimum set-aside elected above, Owner commits to reserve the following number of units in the Development for the indicated income level:

	30% AMI	50% AMI	60% AMI	Unrestricted (Market rate)	Manager/ Employee Units	Total Units
Number of Units						

E. Owner shall establish, for the restricted units identified above, rent limits that do not exceed 30% of the annual gross income of a family whose income is at or below the area median income elected in Section D, above.

F. Owner shall establish initial rents and the procedures for future rent increases based on rules and regulations established in Section 42 of the I.R.C., and all accompanying amendments, regulations and agency guidance.

G. The applicable fraction, as defined in Section 42(c)(1)(B) of the I.R.C., for the building(s) in the Development is _____ %.

The Section 1602 Exchange percentage, as defined in Section II.B. infra, is _____ %.

H. Owner shall provide a detailed schedule, acceptable to ADFA, of construction activities to be completed under this Agreement.

I. Owner shall incur or expend 25% of the total Section 1602 Exchange funds awarded for eligible costs within 90 days of the date ADFA issues the "Notice to Proceed" to Owner. In the event that Owner does not incur or expend said percentage within said time, Owner agrees to deposit

an amount equal to 25% of its total developer fee, which is defined as developer fee plus developer's overhead and profit plus consultant fees (hereafter "developer fee"), into an escrow account held by a third-party, approved by ADFA. Owner agrees that the amount placed in escrow pursuant to this Subsection will be payable in equal annual installments to Owner for fifteen (15) years with the first payment of escrow due to Owner one (1) year after date that the last building within the Development was placed in service. Owner agrees that all disbursements from the escrow account will require prior approval in writing from ADFA. All interest and dividends and other similar income earned on the amount placed in escrow pursuant to this Subsection is program income and accordingly must be paid to ADFA. Owner shall be responsible for the full amount of all fees, costs and other expenses of the creation and maintenance of the escrow account. Owner shall ensure that ADFA is named on the escrow account as a lienholder and is provided with copies of all documents submitted by Owner to the escrow company and submitted by the escrow company to Owner.

- J. Owner shall incur or expend 50% of the total Section 1602 Exchange funds awarded for eligible costs within 180 days of the date ADFA issues the "Notice to Proceed" to Owner. In the event that Owner does not incur or expend said percentage within said time, Owner agrees to deposit an amount equal to 50% of its total developer fee into an escrow account held by a third-party approved by ADFA. Any deposit required under Subsection I above shall not decrease the total developer fee for purposes of the calculation of funds required to be deposited into an escrow account. However, the amount of deposit required under Subsection I may be taken into account in determining the amount of deposit required under this Section. Owner agrees that the amount placed in escrow pursuant to this Subsection will be payable in equal annual installments to Owner for fifteen (15) years with the first payment of escrow due to Owner one (1) year after the date that the last building within the Development was placed in service. Owner agrees that all disbursements from the escrow account will require prior approval in writing from ADFA. All interest and dividends and other similar income earned on the amount placed in escrow pursuant to this subsection is program income and accordingly must be paid to ADFA. Owner shall be responsible for the full amount of all fees, costs and other expenses of the creation and maintenance of the escrow account. Owner shall ensure that ADFA is named on the escrow account as a lienholder and is provided with copies of all documents submitted by Owner to the escrow company and submitted by the escrow company to Owner.
- K. Owner shall incur or expend 75% of the total Section 1602 Exchange funds awarded for eligible costs within 270 days of the date ADFA issues the "Notice to Proceed" to Owner. In the event that Owner does not incur or expend said percentage within said time, Owner agrees to deposit an amount equal to 75% of its total developer fee into an escrow account held by a third-party approved by ADFA. Any deposit required under Subsection I and Subsection J above shall not decrease the total developer fee for purposes of the calculation of funds required to be deposited into an escrow account. However, the amount of deposit required under Subsection I and Subsection J may be taken into account in determining the amount of deposit required under this Subsection. Owner agrees that the escrowed amount will be payable in equal annual installments to Owner for fifteen (15) years with the first payment of escrow due to Owner one (1) year after the last building within the Development was placed in service. Owner agrees that all disbursements from the escrow account will require prior approval in writing from ADFA. All interest and dividends and other similar income earned on the amount placed in escrow pursuant to this subsection is program income and accordingly must be paid to ADFA. Owner shall be responsible for the full amount of all fees, costs and other expenses of the creation and maintenance of the escrow account. Owner shall ensure that ADFA is named on the escrow account as a lienholder and is provided with copies of all documents submitted by Owner to the escrow company and submitted by the escrow company to Owner.

- L. The amounts required to be deposited pursuant to Subsections I, J, and K, above, shall not consist of any TCAP funds, HOME funds, Section 1602 funds or any other type of federal funds.
- M. Owner shall expend 100% of the total amount of Section 1602 Exchange Funds awarded for eligible costs by November 15, 2010. In the event that Owner does not expend 100% of the total amount of Section 1602 Exchange funds awarded for eligible costs by November 15, 2010, Owner forfeits any and all claim to the remaining, undisbursed amount of the Section 1602 Exchange funding awarded to Owner pursuant to this Agreement, and Owner agrees to repay ADFA the total of all Section 1602 funds previously disbursed to Owner.
- N. The Section 1602 Exchange grant amount shall not exceed 85% of the amount of the Development's eligible basis as determined at the end of the first year of the credit period, which may, but does not necessarily, include an amount attributable to the 30% "basis boost" as such term is generally used in the context of the federal low-income housing tax credit program and Section 42 of the IRC. Owner must maintain sufficient documentation to demonstrate that the allowable construction, acquisition and rehabilitation costs of a qualified low-income building exceeds the total amount of Section 1602 Exchange funds and Tax Credit Assistance Program ("TCAP") funds awarded and disbursed to Owner for Development. In the event that the eligible basis as of the end of the first year of the credit period is insufficient to support the amount of Section 1602 Exchange funds disbursed in compliance with this provision, Owner shall repay any and all amount disbursed to Owner that exceeds 85% of such eligible basis.
- O. Owner shall request reimbursement for Development costs to the same extent as allowed under Section 42 of the I.R.C. Owner shall provide with each request for reimbursement to ADFA original receipts, invoices and evidence of payment for all costs expended for which reimbursement is sought. Owner shall not request reimbursement, i.e., make a "Draw Request" of Section 1602 Exchange Program funds until both the pre-construction conference has occurred and ADFA has issued to Owner a "Notice to Proceed."

With each Draw Request, Owner shall provide to ADFA: (1) original receipts and invoices for all eligible costs incurred or expended for which reimbursement is sought; (2) a cost certification of eligible costs, prepared by Owner, its Certified Public Accountant or attorney; (3) written statement of inspection by an authorized representative of ADFA or third party construction monitor; and (4) a "Jobs Reporting" form. ADFA will provide the "Draw Request" and "Jobs Reporting" forms that are to be completed and submitted by Owner.

Payment by ADFA of Section 1602 Exchange funds do not in any way constitute a finding by ADFA that the submitted costs constitute "eligible basis" nor does such disbursement constitute a waiver of ADFA's right to seek repayment of the disbursed amount, in whole or in part, in the event that the costs, or any part of the costs, are at any time deemed to not constitute eligible basis or otherwise ineligible.

- P. The term "Section 42 of the I.R.C.," throughout this Agreement, shall mean 26 U.S.C. Section 42, all amendments thereto, all regulations promulgated there-under and all guidance issued by the Internal Revenue Service and the U.S. Department of Treasury.
- Q. Owner must place the Development in service by the time required based upon the year of allocation of tax credits retained by Owner, unless Owner has exchanged its retained credits for an allocation of 2009 tax credits.

- R. Owner must comply with the 2009 Qualified Allocation Plan, including but not limited to all minimum design standards.
- S. No part of the developer fee may be paid, from any source of funds, until all disbursements of all Section 1602 Exchange funds and TCAP funds awarded to the Development have been disbursed.
- T. Owner covenants that Owner and the Development will comply with all provisions of Section 42 of the I.R.C. and all related regulations and agency guidance. Owner covenants that it will not take or permit any action that would result in a violation of the requirements of Section 42 of the I.R.C., the regulations promulgated thereunder, the American Recovery and Reinvestment Act (“ARRA”), the American Recovery and Reinvestment Tax Act (“ARRTA”), guidance and regulations issued thereunder or otherwise associated, and the provisions of this Agreement. Further, Owner covenants to take any required action, including amendment of this Agreement, as may be necessary, in the opinion of ADFA, to comply with Section 42 and all applicable regulations, rules, and procedures of the Internal Revenue Service or the United States Department of Treasury. In the event that ADFA determines that the Development is not in compliance with the rent and occupancy requirements of Section 42 of the I.R.C., and the Owner, upon written notification by ADFA, does not take immediate steps to correct such non-compliance, ADFA shall be entitled to take such actions as it deems necessary to enforce the provisions of Section 42 of the I.R.C., the ARRA, the ARRTA, all related regulations and guidance, and this Agreement, as more particularly set forth in, but not limited to, Sections V, X and XI.

II. PROJECT FUNDING

- A. ADFA hereby approves the award of Section 1602 Exchange funds in the amount of _____ **Dollars (\$_____)** to the Owner as owner of the Development. Owner’s current contact information is set forth in Section VII, *infra*.
- B. Owner has represented that the Development will have a total eligible basis of \$_____. Thus, the percentage of total eligible basis comprised of Section 1602 Exchange funds granted herein is _____% (“the Section 1602 percentage”).
- C. Owner has represented in its application for funds that the Development will have an eligible basis of \$_____. The amount of Section 1602 Exchange funds awarded herein comprises _____ % of the eligible basis. The Development must have eligible basis at the end of the first credit year in a minimum amount of \$_____.
- D. Owner shall provide a detailed budget, acceptable to ADFA, indicating usage of all funds in the Development budget, including but not limited to the Section 1602 Exchange Funds awarded under this Agreement. Attached hereto as **Exhibit B** is Development’s Final Sources and Uses Statement, which includes the total project Development costs, total amount of Section 1602 Exchange funds, total federal low-income housing tax credit equity, and all other sources of funds. Attached hereto as **Exhibit C** is the Construction Timeline. Time is of the essence for this Agreement. ADFA requires strict compliance with the timeline set forth in Exhibit C. Failure to meet any deadline set forth therein shall cause forfeiture of remaining, undisbursed exchange funds and repayment of all disbursed exchange funds.
- E. Owner shall ensure that Funds provided under this Agreement will be requested for disbursement only in required amounts and as needed for payment of Development costs. Funds will be

disbursed by ADFA for only Development costs actually incurred by Owner, and will not exceed actual cash requirements. ADFA reserves the right to liquidate funds available under this Agreement for eligible costs incurred by ADFA on behalf of Owner.

- F. Owner shall not utilize disbursed Section 1602 Exchange funds for reimbursement of any costs other than those costs specified in the draw request.

Owner shall make its accounting records, including but not limited to all computerized accounting systems, invoices, and reports, available for review by ADFA and ADFA's agent(s) at any time.

- G. Owner shall complete the Development, including all acquisition, rehabilitation and new construction, and place the Development in service as defined by Section 42 of the IRC and accompanying legislation, regulations and agency guidance, by December 31, 2011. However, if any federal low-income housing tax credits were allocated to the Development in any year other than 2009 and are currently held by Owner, Owner certifies that it will comply with all placed-in-service requirements under Section 42 of the IRC for the appropriate allocation year. In the event that the Development is not placed in service by the earlier of the time required under Section 42 or December 31, 2011, Owner shall repay to ADFA all Section 1602 Exchange funds disbursed to Owner pursuant to this Agreement.
- H. Section 1602 Exchange Funds provided under this Agreement will be in the form of a grant; however, the Section 1602 Exchange Funds will be secured by a Mortgage, and a Promissory Note payable only in the event of recapture, a Land Use Restriction Agreement ("LURA"), and a Guaranty.
- I. As consideration for the funds granted herein, Owner warrants that the Development will be acquired and rehabilitated or constructed in accordance with all representations made by Owner, with all applicable federal laws, regulations and agency guidance, with all ADFA requirements, with all State of Arkansas laws, regulations and agency guidance. Owner acknowledges that in exchange for the funds granted herein, ADFA shall have a mortgage on the Development and the General Partner of Owner, Developer, General Partner of Developer or other person or entity whom ADFA finds acceptable shall execute a Guaranty in favor of ADFA for the full amount of the funds granted herein ("Guarantor"). Owner acknowledges that ADFA has full recourse against the Development and Owner in the event that any recapture event occurs, as set forth by guidance issued by the United States Treasury.
- J. Owner shall not dispose, or permit the disposition, of any portion of a building to which this Agreement applies to any person unless all of the building is disposed of to such person. The entire amount of funds granted herein must be repaid to ADFA upon sale of the Development or any building thereof during the applicable affordability period, unless the subsequent purchasers of the Development are approved by ADFA prior to such sale and provided that the subsequent purchaser agrees to: 1.) enter into an agreement with ADFA to own and operate the Development as affordable rental housing for the remaining term of the affordability period; and 2.) abide by all applicable Section 42 requirements.
- K. If for any reason, Owner breaches any term of this Agreement, ADFA is entitled to require full repayment of any amounts advanced under this Agreement pursuant to Section X, Remedies on Default, and pursue any and all other remedies available to it under this Agreement, LURA, Mortgage, Promissory Note, federal law, state law, and any and all other agreements between Owner and ADFA.

III. AFFORDABILITY

All housing developed with funding provided under this Agreement shall be affordable and available to low-income persons as defined within this Agreement for a period of _____ (_____) **years**, (the “affordability period”). The affordability period begins on the day of project completion. Project completion is defined as the date that the last building of the Development is placed in service as defined under Section 42 of the I.R.C.

If the Development does not meet the applicable affordability requirements for the full affordability period for any reason whatsoever, the total amount of Section 1602 Exchange funds disbursed to the Owner pursuant to this Agreement must be repaid to ADFA.

Owner shall ensure that the affordability requirements are met for the full affordability period through deed restrictions and all other necessary documentation and mechanisms. At a minimum, affordability requirements shall be enforced by ADFA via a LURA encumbering the Development for the full affordability period. Owner shall cause, within 30 days of the date of this Agreement, a LURA approved and executed by ADFA and Owner, to be filed in the real property records of the County in which the Development herein is located. Such LURA must be binding on all owners, and successors and be enforceable by ADFA, HUD and residents of the Development.

IV. ASSET MANAGEMENT

- A. All asset management duties will be performed by a third-party asset management company (hereinafter “Asset Manager”), which will report to ADFA.
- B. Owner agrees to cooperate fully with the Asset Manager and ADFA in providing all requested information, developing and maintaining policies required by the Asset Manager and ADFA and all other activities and responsibilities to ensure that the Asset Manager and ADFA have full and complete access to all financial records of the Owner, the Development and all related persons and entities. Owner agrees that it will implement and maintain all policies, practices and actions that are recommended by the Asset Manager and ADFA for operation of the Development to ensure the long-term viability of the Development, including but not limited to establishment of rent amounts, establishment, maintenance and amount of operating and replacement reserves, selection and utilization of property management personnel and companies, refinancing of debt, and restructuring of debt and equity.
- C. Owner shall reimburse ADFA for all fees, costs and expenses charged by the Asset Manager for its asset management services provided to the Development.
- D. Owner shall establish a Replacement Reserves account with an initial balance of three hundred dollars (\$250.00) per unit in the Development, including all restricted units, all market rate units and all manager/employee units. Owner must make annual deposits throughout the affordability period to the Replacement Reserves account in the amount of \$250.00 per unit in the Development. All withdrawals from this account or payments made from this account must be pre-approved by the Asset Manager and ADFA. The balance of the Replacement Reserve account may not at any time be less than the total of two (2) years deposits calculated as set forth above. A copy of the bank account statement evidencing the monthly balance of the Replacement Reserves account must be provided to the Asset Manager on a monthly basis.

- E. Owner shall establish an Operating Reserves account with an initial balance of not less than the sum of six (6) months of:

1. Annual operating expenses as represented in Owner's pro forma financial statement;
2. Annual debt service payments; and
3. Annual replacement reserve deposits.

Owner must maintain such an account throughout the compliance period. All withdrawals from this account or payments made from this account must be pre-approved by the Asset Manager and ADFA. A copy of the bank account statement evidencing the monthly balance of the Operating Reserves account must be provided to the Asset Manager on a monthly basis.

The Operating Reserves account must be replenished to an amount equal to or greater than the amount set forth above within six (6) months of any withdrawal. Owner must provide the Asset Manager with evidence of such replenishment by the earlier of: (a) ten business days after the date of the last deposit which increased the Operating Reserves account to an amount equal to or greater than the amount set forth above, or (b) the tenth business day of the seventh month after the date of the withdrawal. This requirement shall apply separately to each and every withdrawal from the Operating Reserves account that causes the Operating Reserves account balance to decrease below the amount set forth above or is made at a time that the Operating Reserves account balance is less than the amount set forth above.

- F. Owner shall provide within five (5) business days any and all information, records, documentation and reports requested by ADFA or the Asset Manager.
- G. Owner shall maintain property hazard insurance for the Development in an amount sufficient to rebuild the Development in the same manner and quality as promised by Owner in exchange for the Exchange Funds. Owner shall cause ADFA to be named on the insurance policy as Mortgagee and additional loss payee. ADFA is in no manner responsible for payment of the insurance premiums, notifying Owner of premiums due, notifying Owner of any other correspondence received by ADFA in regard to the insurance policy, or any other action or fiduciary duty. Owner understands that ADFA is not Owner's escrow agent and that Owner and ADFA have no fiduciary relationship. It is exclusively the Owner's responsibility to ensure that the Development is sufficiently insured at all times. ADFA has the right to purchase property hazard insurance for the Development and recover all costs for such insurance and the expense of obtaining such coverage from Owner. However, ADFA has no duty to perform this service.

Owner shall maintain liability insurance for bodily injury and automobiles owned, leased, or operated by Owner. Owner shall maintain insurance coverage for flood damage if the Development is located in the 100-year flood plain (FEMA Flood Zone A or any sub-designation of Zone A).

Owner must maintain workers compensation insurance in accordance with all applicable Arkansas law.

Owner must deliver Certificates of Insurance on an annual basis to ADFA and the Asset Manager evidencing all coverage and coverage limits provided to Development.

V. RECAPTURE

- A. When the applicable fraction of a building is greater than the building's Section 1602 Exchange percentage, a recapture event shall occur any time within the Development's 15-year compliance period, as defined by Section 42 of the I.R.C., that the applicable fraction falls below the greater of: (a) the Section 1602 Exchange percentage; or (b) the minimum set-aside elected for the building under Section 42(g)(1).
- B. When the applicable fraction of a building is less than the building's Section 1602 Exchange percentage, a recapture event shall occur any time within the Development's 15-year compliance period that the applicable fraction of the building under Section 42(c)(1)(B) falls below the greater of: (a) the applicable fraction specified for the building in the extended use agreement under Section 42(h)(6)(B)(i), or (b) the minimum set-aside elected for the building under Section 42(g)(1).
- C. Owner's breach of any provision of this Agreement shall constitute an event that ADFA may, in its discretion, deem a recapture event.
- D. In the event that a recapture event occurs, ADFA shall give Owner notice and an opportunity to return to compliance within thirty (30) days. If Owner does not return the Development and/or Owner to compliance within thirty days, ADFA shall require payment of the recapture amount for one year (1/15 of the total grant amount). If, thereafter, the Development and/or Owner remains out of compliance for an additional thirty days, Owner shall be deemed to be in default of this Agreement and ADFA shall pursue all remedies available under this Agreement, federal and state law.
- E. ADFA shall have full recourse against Owner and the Guarantor for the full amount of recapture. ADFA's interest shall be protected by a Mortgage filed in the real property records of _____ County, AR, a promissory note, and a Guaranty executed by the General Partner of Owner, Developer, General Partner of Owner, all partners and members of the General Partner of Owner or other person or entity whom ADFA finds acceptable. The principal of the promissory note and the amount of the Guaranty shall decrease annually by 1/15 of the original Section 1602 Exchange fund grant amount for each year of compliance with the Exchange Agreement, all Section 1602 Exchange Program requirements and all Section 42 requirements.
- F. Any amount subject to recapture shall become a debt owed to the United States payable to the General Fund of the Treasury and enforceable by all available means against any assets of Owner. Owner and the Personal Guarantor shall be liable to ADFA for any and all amounts arising under this Agreement that ADFA is required to repay to Treasury, including any and all penalties, as more fully set forth in Section XIII and Section XIV of this Agreement.

VI. HOUSING QUALITY STANDARDS

- A. All affordable housing developed with Section 1602 Exchange funds provided under this Agreement shall, upon completion, meet or exceed all applicable minimum housing code standards, as established by ADFA, and all state and local housing, zoning, fire, State Model Energy Code and building codes, as amended. In addition, all housing assisted under this Agreement shall be maintained in compliance with all applicable minimum design standards, as established by ADFA, all applicable federal regulations, and all state and local housing, zoning, fire, and building codes, as amended, for the duration of the Agreement and the full term of the required affordability period.

- B. Owner shall establish and maintain records for each income and rent restricted housing unit in the Development, to ensure adherence to all applicable minimum design standards, as established by ADFA, all applicable federal regulations, and all state and local housing, zoning, and building codes, as amended. Prior to processing any periodic draw requests under this Agreement, the Owner's compliance with all such standards will be verified by an inspection conducted by the construction monitor or an ADFA inspector.
- C. A third party construction monitor may be engaged by ADFA to provide construction monitoring services for the Development, or ADFA may itself provide construction monitoring services for Development. Owner must fully cooperate with such construction monitor to facilitate the construction monitor's inspections, reviews, and reporting requirements. No disbursements of Section 1602 Exchange funds will be approved and no Section 1602 Exchange funds will be disbursed to Owner for any reason until the construction monitor has completed all reviews, inspections and reports to ADFA as will be set forth in the construction schedule established for the Development by ADFA and the construction monitor. Owner shall reimburse ADFA for all fees, costs and expenses charged by the construction monitor, or incurred by ADFA, for its services provided on behalf of the Development.
- D. ADFA and all agents of ADFA reserve the right to inspect at any time during normal business hours any and all rehabilitation accomplished under this Agreement to assure adherence to applicable Housing Quality Standards, minimum housing codes, as established by the local jurisdiction, ADFA's minimum design standards, all applicable federal regulations, and all state and local housing, zoning, building and fire codes, as amended.
- E. Owner shall use only licensed contractors and subcontractors, reputable workmen, material suppliers and agents acceptable to ADFA in the rehabilitation, marketing, and leasing of the housing units to be rehabilitated under this Agreement.

VII. NOTICES

Communication and details concerning this Agreement shall be directed to the following persons:

ADFA
Multi-Family Housing Manager
P.O. Box 8023
Little Rock, AR 72203
(501) 682-5900

[owner]
[address]
[phone]
[fax]
[email]

The contact persons listed above may be changed upon fifteen (15) days' written notice to the other party.

VIII. ADMINISTRATIVE REQUIREMENTS

- A. Owner shall abide by all applicable federal, state, and local laws, regulations, codes, and ordinances

in the performance of all activities required by this Agreement, and specifically agrees to adhere to all applicable requirements of 26 U.S.C. 42 and all accompanying legislation, regulations, United States Treasury guidance, and Internal Revenue Service guidance.

- B. Owner shall provide all information requested by ADFA in a timely manner to enable ADFA to meet all reporting requirements imposed by the United States Treasury, other United States government agency or entity, or the State of Arkansas. Owner must provide a monthly report due to ADFA on the 1st day of the first month after the month in which this Agreement is executed. Owner must provide such monthly reports to ADFA through the month in which the Development is placed in service. At such time, the reporting frequency and content may be revised by ADFA. The monthly report shall include, but not limited to, the number of construction and non-construction jobs created in the past month, number of construction and non-construction jobs retained in the past month, the amount of Section 1602 Exchange funds expended, and the completion status of the Development.
- C. Owner shall cause an independent audit of this Development to be performed after completion of the Development. This audit shall be in accordance with generally accepted accounting principles and generally accepted auditing principles. An independent auditor acceptable to ADFA shall conduct the audit. The independent auditor shall provide ADFA with a copy of such audit upon its completion. Any deficiencies noted in the audit report shall be fully cleared by Owner within thirty (30) calendar days after receipt of the audit report by ADFA.
- D. Owner shall make available to ADFA at any time during normal business hours all financial, compliance and rehabilitation records of activities pertaining to funding and the Development covered by this Agreement to allow ADFA to conduct monitoring, performance, and compliance reviews and evaluations. Notwithstanding any other provision in this Agreement, ADFA will monitor the performance of Owner against the activities described in this agreement.
- E. Owner will ensure that all records required under this Agreement are retained for a period of five (5) years after the applicable required period of affordability has expired. When requested, Owner shall furnish, and cause all its subcontractors to furnish, all reports and information required hereunder, and will permit access to its books, records, and accounts, by ADFA, the United States Treasury, Internal Revenue Service, the Department of Housing and Urban Development or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the statutes, rules, regulations, and provisions stated herein.
- F. Owner shall not further encumber the Development pursuant to this Agreement without the prior written approval of ADFA.

IX. DEBARMENT AND SUSPENSION

Owner certifies that the Owner and its principals:

- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation from covered transactions by any federal department or agency;
- B. Have not within a three (3) year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of embezzlement, theft, forgery, bribery,

falsification or destruction of records, fraud, making false statement(s) or receiving stolen property;

- C. Are not presently indicted for or otherwise criminally charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated above, and;
- D. Have not within a three (3) year period preceding this Agreement had one (1) or more public transactions (Federal, State or local) terminated for cause or default.

X. REMEDIES ON DEFAULT

Owner agrees that in the event that ADFA determines that a breach of this Agreement has occurred, including but not limited to failing to complete the Development, failing to ensure that the Development meets all requirements of Section 42 and this Agreement, or failing to meet the necessary percentage of low-income housing units, ADFA may exercise any and all of its rights and remedies under this Agreement, state and federal law, and all applicable regulations, including the right to terminate this Agreement and require repayment of all Section 1602 Exchange Funds granted in this Agreement. More specifically:

- A. If ADFA determines that Owner has materially failed to comply with any provision of this Agreement, or with any rules, statutes, regulations, or ordinances, ADFA will notify Owner in writing by certified mail, return receipt requested, such Notice of Default to the party designated to receive such Notices in Section VII of this Agreement. For purposes of this section, the term materially means "an important or essential term of the Agreement." "Material" necessarily includes but is not limited to any action or inaction by Owner that constitutes a recapture event pursuant to Treasury and/or Department of Housing and Urban Development guidance.
- B. ADFA will allow Owner the opportunity to comply with the requirement(s) at issue. Owner shall offer evidence of such compliance within thirty (30) days from receipt of the written Notice of Default. Any such offered evidence of compliance shall not constitute compliance with the terms and conditions of this Agreement unless ADFA expressly makes a finding in writing that the offered evidence demonstrates compliance with the Agreement requirement(s) in question.
- C. If Owner fails to satisfactorily demonstrate to ADFA that it has fulfilled the requirement(s), ADFA may take any "corrective or remedial actions," including but not limited to those actions listed herein, severally or in combination, or may terminate this Agreement and demand repayment of the full amount of Section 1602 Exchange funds disbursed to Owner under this Agreement and all other remedies to which it is entitled under this Agreement, federal and state law, whether or not any of the corrective or remedial actions were taken:
 - a. Withholding further disbursements pending correction of the deficiency by Owner.
 - b. Require additional information from Owner to verify the nature of a deficiency and adverse effects.
 - c. Specific activities required by ADFA to correct the deficiency and to be accomplished by Owner in a specified time frame.
 - d. Canceling or revising activities may affect the performance of this Agreement and create a deficiency in the original Agreement and may be grounds for

making this contract void, and trigger remedies available to ADFA under this Agreement and/or Section 1602 Exchange Program regulations.

- d. Reprogramming any balance of Section 1602 Exchange Funds made available under this Agreement from deficient activities, or any activity funded under this Agreement, to other eligible activities.
 - e. Suspension of Section 1602 Exchange fund disbursements for any activities funded under this Agreement and subsequent termination of this Agreement in its entirety.
 - f. Termination of this Agreement in its entirety and requiring that the Owner repay to ADFA any and all Section 1602 Exchange Funds received by Owner under this Agreement.
 - g. Removing Owner, Developer, General Partner of Owner, General Partner of Developer or any other member of the development team from future participation in programs administered by ADFA.
 - h. Requiring that Owner terminate the management company. Owner agrees to hold ADFA harmless for any damages or claim for damages caused or alleged to have been caused by this requirement. In the event that equity from the sale of tax credits is a source of funds for the Development that is equal to or greater than one-third (1/3) of the total Development costs and such credits are owned by an entity other than the Owner, any member of Owner's Development team, or any entity affiliated with Owner, the equity contributor must consent in writing to ADFA's election to exercise this right.
 - i. Requiring that Owner engage a management company selected by ADFA to provide management services for the Development. In the event that equity from the sale of tax credits is a source of funds for the Development that is equal to or greater than one-third (1/3) of the total Development costs and such credits are owned by an entity other than the Owner, any member of Owner's Development team, or any entity affiliated with Owner, the equity contributor must consent in writing to ADFA's election to exercise this right.
 - j. Taking any and all other actions that are available to ADFA under this Agreement, all other relevant contractual agreements, applicable regulations, federal law and state law.
- D. ADFA is not required to take any corrective or remedial action before terminating this Agreement. The Notice of Default constitutes prior written notice to the Owner under Section XI. It is within ADFA's sole discretion whether to require corrective or remedial actions, or to terminate the Agreement without requiring, or providing Owner the opportunity to take, corrective or remedial actions.
- E. ADFA is not required to take any corrective or remedial action before pursuing all legal and equitable rights to which it is entitled.
- F. In the event Owner dissolves the organization, ceases to exist, or becomes unable for any reason to fulfill its obligations under this Agreement, ADFA will require Owner to fully repay to ADFA the

remaining balance of any and all Section 1602 Exchange funds disbursed to Owner pursuant to this Agreement.

- G. Notwithstanding any other provision of this Agreement, should there be any fraud, misrepresentation, embezzlement, or any other criminal activity associated with this Development or Owner, ADFA may pursue all legal and equitable remedies available to it against the Owner and the Development.
- H. Any decision regarding corrective or remedial actions, termination, legal or equitable remedies or actions to be taken regarding this Agreement or Development shall be at the sole option and discretion of ADFA. A decision by ADFA to pursue one course of action shall not constitute a waiver of any other course of action ADFA may pursue under this Section X, Remedies on Default.
- I. In the event that legal action is necessary to enforce any provision of this Agreement, the prevailing party shall be entitled to recover its attorney's fees and costs.

XI. TERMINATION

ADFA may terminate this Agreement upon thirty (30) days prior written notice to the Owner contact person indicated in Section VII of this Agreement. The notice of termination shall set forth the reasons for such termination, the effective date of termination, and in the case of partial termination, the portion of the award to be terminated. However, in the case of partial termination, if ADFA, in its sole discretion, determines that the remaining portion of the funding provided under this Agreement will not accomplish the purposes for which the award was made, the ADFA may terminate the award in its entirety.

XII. MISCELLANEOUS PROVISIONS

- A. The officials who executed this Agreement hereby represent and warrant that they have full and complete authority to act on behalf of ADFA and Owner, respectively, and that their signatures below, the terms and provisions hereof, constitute valid and enforceable obligations of each.
- B. This Agreement shall be executed in the original, and any number of executed copies. Any copy of this Agreement so executed shall be deemed an original and shall be deemed authentic for any other use.
- C. The parties may amend or modify this Agreement at any time, provided that such amendment(s) or modification(s) make specific reference to this Agreement, and are executed in writing by a duly authorized representative of both parties. Such amendment(s) or modification(s) shall not invalidate this Agreement, nor relieve or release the parties from their obligations under this Agreement.
- D. The terms and conditions of this Agreement shall be binding upon the parties hereto, their respective successors and assignees.
- E. Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer and employee between the parties. Owner shall at all times remain an independent contractor with respect to the services to be performed under this Agreement. Further, nothing contained in this Agreement is intended to, or shall be

construed in any manner, as creating or establishing the relationship of principal and agent between the parties.

- F. Owner shall not assign or transfer any interest in this Agreement without the prior written approval of ADFA.
- J. This Agreement shall be construed according to the laws of the State of Arkansas.
- K. Any and all suits at law or equity arising out of this Agreement must be filed in the Circuit Court of Pulaski County, Arkansas. By execution of this Agreement, Owner consents to the personal jurisdiction of Arkansas for all matters arising from the application for Section 1602 Exchange funding, award of Section 1602 Exchange funding, this Agreement, construction of the Development and operations of the Development.
- L. Should any part, term or provision of this Agreement, or portions thereof, be determined by a court of competent jurisdiction to be illegal, void or unenforceable, the validity of the remaining portions or provisions shall not be affected thereby.
- M. The use of the singular or plural is for the parties' convenience only and shall not be construed as limiting or expanding any authority, duty, or liability.
- N. Owner hereby waives, to the fullest extent permitted by law, the right to trial by jury in any action, proceeding or counterclaim, whether in contract, tort or otherwise relating directly or indirectly to this Agreement, the associated Mortgage, Note and Land Use Restriction and all other related documents, representations and agreements, for any acts or omissions of Owner, its officers, members, partners, employees, directors and agents.
- O. Owner shall not engage in any business other than owning and operating the Development.
- P. Owner shall not file or consent to a petition of bankruptcy, insolvency, liquidation or reorganization, or make assignment for the benefit of creditors without providing actual notice to ADFA and obtaining ADFA's written consent to any action prior to Owner taking or agreeing to such action.
- Q. Owner waives all right to request a qualified contract pursuant to Section 42(h)(6)(I) of the I.R.C.
- R. Owner understands and agrees that Owner has exclusive responsibility for compliance with all applicable program requirements. Owner understands and agrees that ADFA is neither Owner's legal counsel nor tax advisor and that ADFA and Owner have no fiduciary relationship.
- S. Owner understands and agrees that all information, documents, records and other such items may be considered public information and may be subject to public review. Owner shall not object to the release by ADFA of any submitted information, documents, records or other such items in the event that ADFA legal counsel determines that such disclosure is permissible under federal and state law.
- T. Owner has not relied upon any representations made by ADFA or its agents that are not expressed in this Agreement.
- U. This Agreement shall not be considered merged upon the closing of the Mortgage loan and all terms and conditions set forth herein, whether or not set forth in the Mortgage, shall survive the

closing of the Mortgage loan.

XIII. INDEMNITY

Owner agrees that it shall defend, indemnify and hold harmless ADFA, its officers, agents, directors and employees from and against any and all claims, liabilities, damages, losses, injuries, costs, expenses, suits and actions arising from this Agreement, including but not limited to:

- A. Any and all claims or losses for services rendered by any subcontractor, person or firm performing or supplying services, materials or supplies in connection with the performance of this Agreement.
- B. Any claims or losses resulting to any person or firm injured or damaged by the erroneous, willful or negligent acts or omissions, including disregard of Federal, State, and local statutes or regulations, by Owner, its officers, employees or subcontractors in the performance of this Agreement.
- C. Any and all claims or losses arising from the Development's award of tax credits, award of Section 1602 Exchange funding, construction and operation.
- D. Any and all claims or losses arising from the award and distribution of Section 1602 Exchange funds to Owner for which the United States Treasury seeks repayment, damages or other compensation from ADFA.
- E. Owner agrees to pay all reasonable attorneys' fees and costs incurred by ADFA in defending any and all claims arising out of this Agreement brought against ADFA by any person, entity or governmental body.

No part of the above provision shall be construed to waive A.C.A. §21-9-301.

XIV. RECOURSE

It is expressly understood by the parties hereto that ADFA shall have full recourse against Owner for breach of this Agreement. It is further understood that the General Partner of Owner or Developer and all members and partners of the General Partner of Owner or Developer, or other person or entity acceptable to ADFA, shall be directly liable in the full amount of the Section 1602 Exchange funds granted herein, \$_____. This amount is not affected by any amount required to be placed in escrow pursuant to Section I, Subsection I, J, and K. **The execution of a Guaranty by the General Partner of Owner, Developer, General Partner of Developer, all members and partners of the General Partner of Owner or other person or entity ADFA finds acceptable, for the full amount of Section 1602 Exchange Funds granted herein, is a condition precedent to the effectiveness of this Agreement.** A copy of the Guaranty shall be included hereto and incorporated herein by reference as if set forth word for word.

XV. TIME OF PERFORMANCE

Owner shall commence construction [rehabilitation] of the Development within one-hundred twenty (120) days of the date of this Agreement. In the event that construction does not begin within said time period, ADFA has the right, at its sole discretion, to consider such breach as material and terminate this

Agreement. Any extension of time permitted by ADFA shall not be considered a waiver of this time of performance requirement and shall not affect ADFA's right to terminate this Agreement in any way except as set forth in writing and signed by the President of ADFA.

Owner shall complete construction and place the Development in service by the earlier of the time required under Section 42 of the IRC or December 31, 2011. Owner agrees to fully cooperate with all construction monitoring by a third-party or ADFA personnel. Owner agrees that a construction schedule will be developed no later than the pre-construction conference. In the event that Owner fails to comply with the construction schedule, ADFA shall have the right to terminate this Agreement and recover all Section 1602 Exchange funds disbursed to Owner.

XVI. TERM OF AGREEMENT

This Agreement shall be in full force and effect from the date first written above and shall remain in force for the full period of affordability applicable to the Development assisted with Section 1602 Exchange Funds under this Agreement.

ADFA
Arkansas Development Finance Authority

By: _____
Mac Dodson
Its: President

Federal I.D. Number: 71-0503641

Owner:

By:
Its: General Partner

Date: _____
Federal I.D Number: